IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

WP(C).No. 35697 of 2004(Y)

PETITIONER:

ASOKAN K., PHYSICAL EDUCATION TEACHERS,
PONNIAM U.P.SCHOOL, P.O. PONNIAM WEST,
THALASSERY, KANNUR DISTRICT.

BY ADV. SRI.P.M.PAREETH
SMT.M.SONA

RESPONDENTS:

---

1. STATE OF KERALA, REP. BY SECRETARY,
GENERAL EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. ASSISTANT EDUCATIONAL OFFICER,
THALASSERY NORTH, KANNUR DISTRICT.

BY GOVERNMENT PLEADER SRI. T.T. MAHMOOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)NO.35697/04

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:	TRUE COPY OF THE APPOINTMENT ORDER DATED 4.1.84.
EXT.P2:	TRUE COPY OF THE GIVT. ORDER GO(RT)4269/2000/G EDN DATED 21.10..00
EXT.P3:	TRUE COPY OF THE G.O.(RT)NO.4896/2000/G E.DN. DATED 30.11.00.
EXT.P4:	TRUE COPY OF THE ORDER NO.DIS 29864/88/85 DT. 8.12.88 ISSUED BY DEPUTY DIRECTOR OF EDUCATION KANNUR.
EXT.P5:	TRUE COPY OF THE G.O.(RT)NO.5081/2000/g. EDN. DT. 12.12.2000.
EXT.P6:	TRUE COPY OF THE G.O.(MS)NO.113/2000/G. EDN DT. 6.4.00.
EXT.P7:	TRUE COPY OF THE JUDGMENT DATED 31.10.01 IN O.P.NO.32664/01.
EXT.P8:	TRUE COPY OF THE G.O.(MS)NO.87/79/G. EDN. DATED 2.6.79.
EXT.P9:	TRUE COPY OF THE SAID REPRESENTATION DATED 1.3.04.
EXT.P10:	TRUE COPY OF THE G.O.(RT)NO.4540/2004/G EDN DT. 18.10.04.
EXT.P11:	TRUE COPY OF THE G.O.(RT)NO.3310/2004/G.EDN. DT. 31.7.04.
EXT.P12:	TRUE COPY OF THE G.O.(MS)NO.307/2004/G. EDN. DT. 4.10.04.

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)NO. 35697 OF 2004

DATED THIS THE 5th DAY OF SEPTEMBER, 2007

JUDGMENT

The petitioner is a part time Physical Education teacher in an aided school. He aspires for conversion of his part time post to full time. It is not disputed before me that going by the Kerala Education Rules as it now stands even a part time post of a specialist teacher is permissible only if the school has the required student strength and that going by the student strength of the petitioner's school, there is no scope for such a post. But the petitioner's grievance is that in exercise of powers under Rule 3 of the K.E.R. the Government have been passing orders in similar cases in favour of similarly situated persons as evidenced by Exts.P3,P4,P5,P6,P11 and P12. The petitioner submits that while other similarly situated persons have been granted the benefit of full time post, one of which is in the same school itself, it is totally unjust and discriminatory to deny the petitioner alone that benefit.

2. I have my own doubts about the power of the Government to issue such orders in exercise of powers under Rule 3. But it remains as fact that similarly situated persons, that too in the same school itself, relaxation of the rule has been granted to convert part

time post to full time. In spite of the same, the respondents have in the case of the petitioner taken a different stand relying on the letter of law as available in the K.E.R.

3. In the facts and circumstances of the case, I feel that a second look into this matter is necessary. Accordingly, I quash the impugned orders and direct the 1st respondent Government to reconsider the matter in the light of the similar orders passed in this regard produced by the petitioner after affording an opportunity of being heard to the petitioner. This shall be done within a period of two months from the date of receipt of a copy of this judgment. While doing so, the Government shall consider whether such indiscriminate relaxation of rules is warranted especially when a Division Bench of this Court has in **Esther Vs. State of Kerala (1989 (1) KLT 621)** held as follows:

> "The Government has been conferred the power to dispense with or relax the requirement of any of the Kerala Education Rules. Such a power can be exercised only when the Government is satisfied that the operation of the particular rule causes undue hardship. It is the hardship that is caused by the operation of a particular provision that is the condition precedent for exercise of the power of dispensation or relaxation".

As such evidently the intention behind the rule is to relax any rule when there is general hardship caused on account of the rigour of the rule and not to give benefits to individual cases. The

Government should consider whether it is in the interest of the State Exchequer to give such relaxation in new cases to confer individual benefits to persons who are not otherwise entitled to such benefits under law. Once the Government takes a decision in that regard the same shall be uniformly applied to all cases in future without deviating in individual cases.

The writ petition is disposed of as above.

S. SIRI JAGAN, JUDGE

Acd